Secrt. II-48—19,063—11-8-21.

Law (192/) Department.

General

SERIES.

Ordinary

G.O. No. 1336

DATED 8-9-21

[Despatch Abstract.]

Motor Vehicles Act, 1914---B. Bragança-South Canara district disqualified for 3 years under section 18.

C.F. 29—1,296 24-12-19.

HOME (JUDICIAL) **DEPARTMENT.**

Received ... 19 . Registered 19

Subject.

Recommending that B. Braganza, late licensed motor bus driver in the South Kanara District, may be permanently disqualified from obtaining a driver's license.

Enclosures.
No. Nil
Spare copies

Ref. No. 1627-21 M.

Station Mangalore. *Dated the* 19th July 1921.

From (Name) R. H. Ellis, Esquire, I.C.S.,

(Designation) District Magistrate, South Kanara.

To The Secretary to the Government of Madras,

Home (Judicial) Department.

Sir,

Reference:- Judgment in C.C. No. 28/21 on the file of the Sub-Divisional Magistrate, Mangalore.

A perusal of the copy of the judgment submitted herewith would show that the accused B. Braganza son of J.B. Braganza, late motor driver, Mangalore, has been found to be a reckless, careless and dangerous driver and that he is not a fit person to hold a license under the Indian Motor Vehicles Act, 1914. I therefore recommend that the Government may be pleased to declare the said Braganza disqualified from holding or obtaining a license under the said Act.

P. Ramachandra Rao 20/7/21

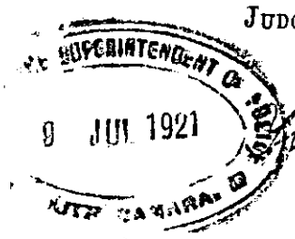
for Dt. Magistrate.

R C C No. 442/21

No. 59—Magl.
No. 74—Criminal.

2

In the Court of the Sub Divisional I class magistrate
——— Mangalore Division



JUDGMENT IN CALENDAR CASE No. 28 OF ~~1907~~ 21, ON THE FILE OF THE Sub Divl MAGISTRATE OF Mangalore Division.

Thursday the 30th day of June 1921.

M.R.Ry K.C. Manavedan Raja Avl

Complainant ... ... King Emperor (Taluq Stn
F.I.R. No. 26/21.
By (Prosecuting Inspector of Police

Accused ... ... B. Braganza
(By vakil Mr. V.V. Suvarna)

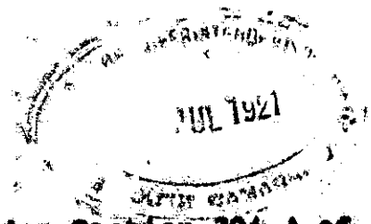
Offence ... ... Causing death by rash or negligent act. Section 304 (A) I.P.C.

Finding ... ... - Guilty

Sentence ... ... To undergo rigorous imprisonment for four months.

Serial number.	Description of the Accused:						Date of					Explanation of delay.
	Name.	Father's or Uncle's Name.	Caste or race.	Occupation	Residnce	Age	Occurrence.	Complaint.	Apprehension or appearance	Commencement of trial	Close of trial.	
1	2						3					
C. 28/20	B. Braganza	J. B. Braganza	R. C. Xtian	Motor Driver	Mangalore Town	32 yrs.	26.4.21	charge sheet received on 26/5/21	10.6.21	10.6.21	30.6.21.	

4



Judgment.

The charge against the accused is one under Section 304-A of the Indian Penal Code. The facts of the case are briefly stated -- below:-

2. On the 26th of April last, the Motor Bus of the Kanara Public Conveyance Company left Mangalore at about 10-30 or 10-40 A.M. On the way it was stopped on the road near the Kamble for a little -- over quarter of an hour to pick up some passengers. After that it - went to Kulur Ferry. There was another Bus of the same company af--ter crossing the Kulur Ferry. That Bus was that day in charge of the accused before the Court as its driver. This Bus of which the accused was the driver started from the other side of the Kulur Ferry at about 12 noon. After it ran for about 3 or 4 furlongs, the Bus ran into a field on the left side about 4 or 5 feet deep and fell top side down causing death by that fall to the cleaner who was sitting on the left front mud-guard and injury to almost all he passengers i in the Bus. The Police investigated the matter and charged the ac--cused for an offence under Section 304-A I.P.C.

3. The Prosecution examined 13 witnesses to prove the case. Of these, P.Ws.-1, 6, 10 and 11 are the various medical officers who treated the injured persons. They file the various certificates --- granted by them - Exhibits: A, B, D and G. P.W.-1 proves that he treated P.W.-3, one of the passengers, for his injuries caused by the cap-sizing of the Motor Bus. P.W.-5 was the person who attended to the injuries on the deceased cleaner and also proves that the deceased succumbed to the injuries he had. This witness has also treated two other persons who had similarly sustained injuries by the fall of the Motor. P.W.-10 is the Assistant Surgeon of the Wenlock Hospital and He proves the post-mortem certificate he granted after conducting-- the post-mortem on the body of the deceased cleaner Syed Ibrahim. --- This witness says that the deceased died as a result of the rupture of the spleen and the consequent internal haemorrage. He also adds that the spleen was healthy and the rupture must have been the result

of something compressing it by running over or pressing against the abdomen. He also proves that both the bones of the left - leg were found fractured and the 9th and the 10th ribs were al- -so found fractured. He gives it as his opinion that the in- -juries could have been caused by the sudden capsising of a --- Motor Bus and the consequent pressure of the weight of it on — the person of the deceased. P.W.-11 is the Assistant Surgeon at Kundapoor. He proves that he treated P.W.-8 for the inju- -ries he had sustained.

4. P.Ws.-7, 8 and 9 are formal witnesses. P.W.-7 is the Sub-Inspector of Taluk Station who conducted the inquest -- under the supervision of the Circle Inspector P.W.-12. P.W.-8 is the father of the deceased who says that he identified the - deceased's body as that of his son. P.W.-9 is the Constable who was in charge of the dead body after the inquest. He was also present at the time of the post-mortem examination. The -- Post-mortem certificate is Exhibit 'F' and the inquest report - is Exhibit 'E'.

5. The important witnesses in this case are P.Ws.-2, 3, 4, 5 and 12. P.W.-2 is the Shanbhogue of Bappanad village. He says that on the day in question he had taken a ticket and - was travelling in the Bus when the Bus fell into the field. -- He sustained injuries for which he got treated in Mulki Dispen- -sary. He also proves that that day after leaving Kulur Ferry the accused drove the Bus at a very high speed, about 1½ times its usual speed and all the time from starting from Kulur till the fall of the Motor Bus the accused was looking behind and talk- -ing to passengers sitting in the hind rows. P.Ws.-3 and 4 are members of the District Board who had come to Mangalore -- for the District Board meeting the previous day and were return- -ing to Kundapoor the next day. P.W.-3 is also a vakil prac- -tising in Coondapoor and P.W.-4 is a rich land-holder. Both these witnesses say that after leaving the Kulur Ferry the ac- -cused drove the Motor at a high speed. They both state that

he speed was much more than the ordinary speed with which the ---- Motor Bus is driven. P.W.-5 also proves that the speed was more than ordinary. This witness was allowed to be treated as hostile as he denied some of the statements he had made to the investigating officer - the Circle Inspector. That this witness was leaning towards the accused is clear from the fact he is one of the -- sureties for the accused. This witness also impressed me to be an unwilling witness for the prosecution. Then we have the evidence of the investigating officer-- the Circle Inspector. His evidence shows that the accused told him that the cause of the accident was the left front wheel of the Bus running over a stone as big as a big mango and then turning all on a sudden and getting out of control This witness says he went to the spot, examined the Bus putting it on the jack and he found that both the brakes were perfectly all right and they have ought to have stopped theBus if applied in time.

6. The accused in his statement filed through his vakil says that he was driving the Bus only at the ordinary speed, that the left front wheel ran over a stone and jumped, that in trying to steady the Bus the hind wheel slipped below the brink of the road which was narrow at the place and the only alternative was for the Bus to fall into the field. In other words he says that the whole thing was an accident pure and simple over which he had no control.

7. Three witnesses have been examined for the defence. D.Ws.-1and 2 were passengers in the Bus on the day on which the mishap happened. They say that the Bus was that day being driven by the accused only at the ordinary speed, and that the accused was not in any way negligent in his duties. D.W.-3 says that at the time the Bus fell down it was running close to the field and that he heard a noise on account of the wheel going over a stone. He also says he saw a stone of the size of a small cocoanut lying on the road crumbled to pieces.

8. The whole question for decision is whether the accused was rash or negligent. The facts that the death of the cleaner was

caused is not denied and that the accused was the driver of the Bus at the time when the Bus fell down.

8. From the evidence of the P.Ws.2, 3, 4 and 5, it is quite clear that on the day ~~of~~ in question before the Bus fell into the field the Bus was being driven by the accused at a much higher speed than the usual speed. Of course we have the evi-dence of D.Ws.-1 and 2 who say it was the only the usual speed But considering the status of the prosecution witness more es-pecially P.Ws.-3 and 4, I must say, their ~~xxxx~~ evidence is far more valuable than that of the defence witnesses. D.W.-2 is a small school boy who is reading in the III Form. I very much doubt he is really in a position to have any sense of proportion of the speed on various occasions. P.W.-3 is an educated gentle-man and I think his evidence of this point is entitled to much more weight. It was argued before me by the pleader of the ac-cused that there was no reliable ~~xxxxxx~~ evidence at all as to the actual speed or the speed which the Bus is capable of. The latter point is irrelevent to the enquiry and the former must re-main a mystery so long as there is no self recording speedometre But the fact that the speed with which the accused drove before the Motor Bus fell down was much more than the normal speed seems to me to have been well established. And, if a person drives a vehicle at an un-usually rapid pace and if person travelling in it are killed or injured I think the person who drives is directl responsible for the result.

9. Next, it is urged that the Bus ran over a stone and the wheels turned all on a sudden. It is also urged by questions in the cross-examination of P.W.-12 that there were wheel groves on the road. Perhaps it is suggested by this that the accused wanted to avoid the wheel groves and so took the Bus to a side, I see the same point sought to be proved by the evidence of D.W-2 who says that the Bus was running close to the edge of the road and that the stone over which the wheel jumped was only about 1 or 1½ spans from the every verge of the road to the field. The accused in his statement also urges that the road at the spot

was narrow. I may at the 1st instance point out that none of the Prosecution witnesses were asked in their cross examination as to the width of the road. We have the evidence on the other hand -- of the Prosecution witnesses that road at the place was not parti--cularly narrow. It was straight and there were no obstructions of any sort on it. The theory that the Bus was running on the very verge of the road is falsified by the evidence of P.W.-12 who had ins--pected the spot. He says that from the point where the front left wheel began to turn, the distance to the edge of the road is three -- feet. He also proves that the front wheels did not turn at right angles and go into the field but they have run a distance of about 12 yards before falling into the field. This clearly shows that the turning was not quite at right angles and sudden nor was the Bus so close to the field that a sudden jerk would make it fall into the field. P.W.-12 also says that the breaks were perfectly alright. It is therefore clear that their timely and proper application ought to have averted the fall. It is stated in accused's statement that the hind wheel slipped into the field but the evidence of P.W.-12 shows that even after turning the Bus went off slantingly about 12 yards before it went into the field. If this is true there is no possibility of the hind wheel slipping and if it was the hind wheel that really slipped I should have expected the persons seated in the back portions to receive more serious injuries. As I have al--ready said the Prosecution evidence clearly shows that the Bus was running on the road proper and not its edge.

10. Then about the accused's negligence, we have the evidence of P.W.-3 who says that the accused was conversing with the people in the hind rows about a certain suit for damages that had been filed by one Appaji Rao against this very same company and which had been posted for hearing the previous day. P.W.-3 says that the accused was talking to the persons behind him turning his head behind. These witnesses have no enmity at all against the accused. But the -- pleader for the defence says that though these witnesses have no en--mity they have been victims who suffered injury and it is therefore

natural that they would try to put the guilt on some one. I need not to follow up this line of argument. My own impression is that--- these witnesses would have been the last persons to unnecessarily bring the accused to trouble if really he did nothing as alleged by them. It seems to me therefore quite clear that the accused was engaged in a conversation with the passengers in the Bus sitting behind him and perhaps also looking behind to them. This was certainly a negligent act. His duty was to see to the front and observe if there were any obstables. Instead of that he engaged himself in a conversation with the passengers and therefore he is clearly guilty of culpable negligence. If really he had been observing the road he could have seen the stone which he alleges was the cause of the Motor tumbling into the field. When again he was certainly careless if as admitted by himself he took the Bus by the very edge of the road.

11. From the evidence on record I am clearly convinced that the accused drove the Bus very rashly and negligently and --- without proper care and caution and therefore caused it to fall into the field as the direct result of which the death of the --- cleaner Syed Ibrahim was caused. I therefore find him guilty under Section 304-A I.P.C. and convict him of the offence.

In passing the sentence I cannot help taking rather a --- serious view of the case. The responsibility of the accused as the driver in charge of the Bus was certainly very great. He was in charge, so to say, of the life of so many passengers. He did not at all feel this responsibility or at any rate dealt lightly with it . His negligence and rashness have caused the death of the cleaner. I therefore think in a case like this an exemplary punishment is necessary. I therefore sentence the --- accused to undergo four months rigorous imprisonment. The accused shall be lodged in the Central Jail, Cannanore.

Sd/ K. C. Manavedan Raja,
30-6-1931
Sub-Divisional I Cl. Magistrate.

1921

Appendix.

Witnesses examined for:

Prosecution:	Defence:
1. Mr. V. Shrinivas Heggade.	1. P. Sadashiva Rao.
2. Annappayya.	2. M. Panduranga Rao.
3. Mr. V. Subbannaya (Vakil).	3 Mithappa.
4. Mr. Soukoor Anthai Shetty.	
5. Rangappayya,	
6. Mr. N. P. Subramanya Iyyer.	
7. Mr. A. Shesha.	
8. Meer Muhammad.	
9. Pedloji.	
10. Mr. P. Bhavani Rao.	
11. Mr. A. Narsinga Rao.	
12. Mr. B. K. Subrayachar.	

Exhibits files for:-

Prosecution:

A. Mound certificate granted to Annappayya.
B. - Do - to Koragappa of Kappalam.
C. Motor Buss Ticket produced by P.W.-2.
D. Mound certificate granted to Shrinivas Rao.
E. Inquest report.
F. Post-mortem certificate on the dead body of Syed Ibrahim.
G. Mound certificate granted to P.W.-11, to P.W.-3.

Defence:-

I. Ticket No.2877/23-4-1921 produced by D.W.-1.
I. Ticket No.3876/23-4-1921 produced by D.W.-3.

Sd/ K.C.Manavedan Raja,
30-6-1921.
Sub-Divisional Ist Cl. Magistrate.

/True copy/

(By order)

A Ramachandra
9/7/21
Head Clerk,
Sub-Divisional Magistrate's Office.

M.F.S./9-7.
To

The District Superintendent of Police, South Kanara with reference to his C.No.748/Genl./1921, dated: 3rd July 1921.

Law (genl) dept

C. no 2657 of 1921

Memo. 2657C-1 dy 19-8-21

Motor Vehicles Act — B. Braganza, late licensed motor bus driver — rash & negligent driving

D. m's letter no 1627-21/m dy 19-7-21

The D. m, South Kanara is requested to report if the driver ~~had~~ appeals against his conviction & sentence by the sub-divisional magte, Mangalore, & if so with what result.

M.V.
17-8-21

RVK
18/8

Issued 6 CC
19/8/21

DESPATCHED
20 AUG 1921

To
The D. M. South Kanara
Memo only.

Remand after 1 month.

M.V.V
17 8 21

C.F. 29—1,296 24-12-19.

12

Law (General) **DEPARTMENT.**

Received ..... 19 . *Registered* G 3286 C 19

C.S. 21

Subject.

Motor Vehicles Act --- B. Braganza --late motor bus driver---rash and negligent driving--conviction and sentence --confirmed in appeal.

ENCLOSURES.
No. ~
.....
Spare copies ~

II Ref. No. 1627--21 M.

Station Mangalore, *Dated the* 27th August '21 ~~19~~

From (Name) R. H. Ellis, Esq., I.C.S.,

(Designation) ~~Dt. Magistrate of South~~ Kanara.

To The Secretary to the Government of Madras,

Law (General) *Department.*

Sir,

Reference:-- Government Memorandum No.2657--C--1 dated 19th August 1921.

The appeal filed by the driver against his conviction and sentence by the Sub Divisional Magistrate, Mangalore, has been dismissed and the sentence confirmed by the Sessions Judge of South ---- Kanara.

Kumaraswamy
308

For Dt. Magistrate.

Law (GI) Dept.

1376

Motor driver's licence – B. Braganza – permanent disqualification – recommended.

From The D.M. South Kanara, Ref 1627-21 M dt 19.7.21

AS.

The District Magistrate recommends, on the evidence in the case, that the accused should be permanently disqualified to hold a driver's licence. Submitted for orders whether the D.M's recommendation may be accepted or whether in consideration of this being his first offence for which he is already undergoing rigorous imprisonment for a period of 4 months, his licence may be suspended for a definite period.

GS. 8.8.21 — Secy — RVK 11/8.

M.V.
8-8-21

In brief quote or refer the rule under which the Dist suggestion can be accepted. Is it 185 Act VIII of 1914 I fear. I should declare him disqualified permanently under cl (iii) of this section

8/8
1282

C3 Does there an appeal from the conviction? I am inclined to the punishment as regards speed. What is the allowable speed. Is there any restriction? The man was clearly guilty of negligence in driving round a sharp corner. Suspend his license disqualify for 3 years. by 13/8/21 P.T.O

[P.T.O.]

V

For A.S.

With reference to H.M's remarks at ¶ 1 ante, it is submitted that the office has no information as to whether there was any appeal in this case from the conviction by the Sub. Dl. Magistrate. If necessary, this will be ascertained through the D.M. S. Kanara. As regards speed limits, attention is solicited to Rule 4 of the Motor Vehicle Rules – Vide ¶ 8 of G.O 1427 Genl dated 1.6.16.

Date of judgment. 30.6.21
D. M's letter 19.7.21
Appeal time not over + One time.

5 to 12 miles acc: to circumstances.

E.

2. A draft order disqualifying the Motor driver for a period of 3 years, from holding a licence under the Motor Vehicles Act, is submitted for approval.

RVK
17/8.

CR
16-8-21.

M.V.V
16-8-21

See

Enquire first if there has been an appeal & if so with what result.

17827

AS.

Draft submitted. May be issued.

RVK
17/8

M.V.V.
17.8.21

Memo to the D.M. South Kanara No 26570-1 of 19.8.21

1627-21M of 27.8.21.

C.3286 From the A.S.

The D.M. reports that the sentence

of the Divisional Magistrate was confirmed on appeal. The file may now be circulated to C3. with reference to his remarks at ✝ 1 and where C3 ~~[illegible]~~ directs disqualification for 3 yrs.

CR.
1-9-21.

M.V.V.
1.9.21

RVK
19

Secy

SD
3 9 21

C3 I think 3 years Sufficient.

5/9/21.

For A.S.

Submitted for orders whether the original draft may now issue.

RVK
19

CR
6-9-21

Sectt. II-10 (a)—26,596—11-4-21.

Law (GI) DEPARTMENT.

	Date.	Initials.
When received for Fair-copying.		
When copied		
When examined ..	9/9	
When signed ..		
When despatched ..		

Motor Vehicles Act, 1914. – B. Braganza, S. Kanara district – disqualified for 3 years under Sec. 18.

READ G.O. No. ....., dated ..... 192 .

" " " " ..... " ..... 192 .

READ ALSO:—

C. No. 2657, From the D. M. South Kanara Ref. No. 1627-21 M dated 19.7. 1921.

" " " " ..... " 192

" " " " ..... " ..... 192 .

ORDER. No. 1336, dated 8.9. 1921.

~~Mrs~~. Mrs ~~Brown~~

Under clause (ii) of sub-section (1) of section 18 of the Indian Motor Vehicles Act, 1914 (VIII of 1914), the Governor in Council hereby declares that B. Braganza, late a licensed motor-car driver in the South Kanara district, is disqualified from obtaining a licence under the said Act for a period of three years from the 1st September 1921.

Corrected/S.V.M.

D. ... 16.8.21

To

D. M. South Kanara ~~(Sent)~~ 210. Ex.
All other D. Ms.
I. G. of Police
Comr. of Police
S. G. P. for publication in the Gazette ~~although~~.

Ans. GR. 16.8.21

M.V.V. 16.8.21

RVK 17/8